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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 5757

12 **LISA FAMILY PHARMACY INC., DBA**
13 **LISA FAMILY PHARMACY**
14 **LISA SUSANNE HOHENTHNER,**
15 **PRESIDENT**
14137 Lakeridge Ct.
P.O.Box 970
Magalia, CA 95954

ACCUSATION

16 **Pharmacy Permit No. PHY 51582**

17 **LISA SUSANNE HOHENTHNER**
765 Secluded Lane
18 Paradise, CA 95969

19 **Pharmacist License No. RPH 63937**

20 and

21 **JULIE CATHERINE MAY**
23 Misty Way
22 Chico, CA 95926

23 **Pharmacy Technician Registration**
24 **No. TCH 93974**

25 Respondents.

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1 Virginia Herold (“Complainant”) alleges:

2 **PARTIES**

3 1. Complainant brings this Accusation solely in her official capacity as the Executive
4 Officer of the Board of Pharmacy (“Board”), Department of Consumer Affairs.

5 **Pharmacy Permit**

6 2. On or about October 9, 2013, the Board issued Original Pharmacy Permit Number
7 PHY 51582 to Lisa Family Pharmacy Inc. doing business as Lisa Family Pharmacy (“Respondent
8 Lisa Family Pharmacy”), with Lisa Susanne Hohenthanner, President and Pharmacist-in-Charge.
9 The Original Pharmacy Permit was in full force and effect at all times relevant to the charges
10 brought herein and will expire on October 1, 2016, unless renewed.

11 **Pharmacist License – Lisa Susanne Hohenthanner**

12 3. On or about July 2, 2010, the Board issued Original Pharmacist License Number RPH
13 63937 to Lisa Susanne Hohenthanner (“Respondent Hohenthanner”). The Original Pharmacist
14 License will expire on January 31, 2018, unless renewed.

15 **Pharmacy Technician Registration – Julie Catherine May**

16 4. On or about September 27, 2009, the Board issued Original Pharmacy Technician
17 Registration Number TCH 93974 to Julie Catherine May (“Respondent May”). The Original
18 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
19 brought herein and will expire on May 31, 2017, unless renewed.

20 **JURISDICTION**

21 5. This Accusation is brought before the Board under the authority of the following
22 laws. All section references are to the Business and Professions Code (“Code”) unless otherwise
23 indicated.

24 6. Code section 4083 states, in pertinent part:

25 (a) An inspector may issue an order of correction to a licensee directing the
26 licensee to comply with this chapter or regulations adopted pursuant to this chapter.

27 (f) Nothing in this section shall in any way limit the board's authority or ability
to do any of the following:

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1 (3) Institute disciplinary proceedings pursuant to Article 19 (commencing with
2 Section 4300).

3 7. Code section 4300 states, in pertinent part:

4 (a) Every license issued may be suspended or revoked.

5 (b) The board shall discipline the holder of any license issued by the board,
6 whose default has been entered or whose case has been heard by the board and found
7 guilty, by any of the following methods:

8 (1) Suspending judgment.

9 (2) Placing him or her upon probation.

10 (3) Suspending his or her right to practice for a period not exceeding one year.

11 (4) Revoking his or her license.

12 (5) Taking any other action in relation to disciplining him or her as the board in
13 its discretion may deem proper.

14 8. Code section 4300.1 states:

15 The expiration, cancellation, forfeiture, or suspension of a board-issued license
16 by operation of law or by order or decision of the board or a court of law, the
17 placement of a license on a retired status, or the voluntary surrender of a license by a
18 licensee shall not deprive the board of jurisdiction to commence or proceed with any
19 investigation of, or action or disciplinary proceeding against, the licensee or to render
20 a decision suspending or revoking the license.

21 STATUTORY AND REGULATORY PROVISIONS

22 9. Code section 4301 states, in pertinent part:

23 The board shall take action against any holder of a license who is guilty of
24 unprofessional conduct or whose license has been procured by fraud or
25 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
26 not limited to, any of the following:

27 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
28 abetting the violation of or conspiring to violate any provision or term of this chapter
or of the applicable federal and state laws and regulations governing pharmacy,
including regulations established by the board or by any other state or federal
regulatory agency.

10. Code section 4113(c) states, "The pharmacist-in-charge shall be responsible for a
pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of
pharmacy."

1 11. Code section 4023.5 states, "For the purposes of this chapter, 'direct supervision and
2 control' means that a pharmacist is on the premises at all times and is fully aware of all activities
3 performed by either a pharmacy technician or intern pharmacist."

4 12. California Code of Regulations ("Regulations), title 16, section 1714(d) states, in
5 pertinent part:

6 Each pharmacist while on duty shall be responsible for the security of the
7 prescription department, including provisions for effective control against theft or
8 diversion of dangerous drugs and devices, and records for such drugs and devices.
9 Possession of a key to the pharmacy where dangerous drugs and controlled
10 substances are stored shall be restricted to a pharmacist.

11 13. Code section 4115 states, in pertinent part:

12 (a) A pharmacy technician may perform packaging, manipulative, repetitive, or
13 other nondiscretionary tasks only while assisting, and while under the direct
14 supervision and control of, a pharmacist. The pharmacist shall be responsible for the
15 duties performed under his or her supervision by a technician.

16 (h) The pharmacist on duty shall be directly responsible for the conduct of a
17 pharmacy technician supervised by that pharmacist.

18 14. Regulations section 1793.7 states, in pertinent part:

19 (b) Pharmacy technicians must work under the direct supervision of a
20 pharmacist and in such a relationship that the supervising pharmacist is fully aware of
21 all activities involved in the preparation and dispensing of medications, including the
22 maintenance of appropriate records.

23 (e) A pharmacist shall be responsible for all activities of pharmacy technicians
24 to ensure that all such activities are performed completely, safely and without risk of
25 harm to patients.

26 15. Regulations section 1793.1 states, in pertinent part,

27 Only a pharmacist, or an intern pharmacist acting under the supervision of a
28 pharmacist, may:

(e) Consult with any prescriber, nurse or other health care professional or
authorized agent thereof.

16. Code section 4070(a) states:

Except as provided in Section 4019 and subdivision (b), an oral or an electronic
data transmission prescription as defined in subdivision (c) of Section 4040 shall as
soon as practicable be reduced to writing by the pharmacist and shall be filled by, or
under the direction of, the pharmacist. The pharmacist need not reduce to writing the
address, telephone number, license classification, federal registry number of the
prescriber or the address of the patient or patients if the information is readily
retrievable in the pharmacy.

1 17. Regulation 1717(c) states:

2 Promptly upon receipt of an orally transmitted prescription, the pharmacist
3 shall reduce it to writing, and initial it, and identify it as an orally transmitted
4 prescription. If the prescription is then dispensed by another pharmacist, the
5 dispensing pharmacist shall also initial the prescription to identify him or herself. All
6 orally transmitted prescriptions shall be received and transcribed by a pharmacist
7 prior to compounding, filling, dispensing, or furnishing. Chart orders as defined in
8 section 4019 of the Business and Professions Code are not subject to the provisions of
9 this subsection.

7 18. Regulation 1793.1 states, in pertinent part: "Only a pharmacist, or an intern
8 pharmacist acting under the supervision of a pharmacist, may: (a) Receive a new prescription
9 order orally from a prescriber or other person authorized by law."

10 19. United States Code, title 21, section 829(b) states:

11 Schedule III and IV substances. Except when dispensed directly by a
12 practitioner, other than a pharmacist, to an ultimate user, no controlled substance in
13 schedule III or IV, which is a prescription drug as determined under the Federal Food,
14 Drug, and Cosmetic Act [21 USCS §§ 301 et seq.], may be dispensed without a
15 written or oral prescription in conformity with section 503(b) of that Act [21 USCS §
16 353(b)]. Such prescriptions may not be filled or refilled more than six months after
17 the date thereof or be refilled more than five times after the date of the prescription
18 unless renewed by the practitioner.

16 20. The Code of Federal Regulations, title 21, section 1306.22(a) states:

17 No prescription for a controlled substance listed in Schedule III or IV shall be
18 filled or refilled more than six months after the date on which such prescription was
19 issued. No prescription for a controlled substance listed in Schedule III or IV
20 authorized to be refilled may be refilled more than five times.

20 21. Code section 4307 states, in pertinent part:

21 (a) Any person who has been denied a license or whose license has been
22 revoked or is under suspension, or who has failed to renew his or her license while it
23 was under suspension, or who has been a manager, administrator, owner, member,
24 officer, director, associate, or partner of any partnership, corporation, firm, or
25 association whose application for a license has been denied or revoked, is under
26 suspension or has been placed on probation, and while acting as the manager,
27 administrator, owner, member, officer, director, associate, or partner had knowledge
28 of or knowingly participated in any conduct for which the license was denied,
29 revoked, suspended, or placed on probation, shall be prohibited from serving as a
30 manager, administrator, owner, member, officer, director, associate, or partner of a
31 licensee as follows:

27 (1) Where a probationary license is issued or where an existing license is
28 placed on probation, this prohibition shall remain in effect for a period not to exceed
29 five years.

1 (2) Where the license is denied or revoked, the prohibition shall continue until
2 the license is issued or reinstated.

3 (b) "Manager, administrator, owner, member, officer, director, associate, or
4 partner," as used in this section and Section 4308, may refer to a pharmacist or to any
5 other person who serves in that capacity in or for a licensee.

6 COST RECOVERY

7 22. Code section 125.3 provides, in pertinent part, that the Board may request the
8 administrative law judge to direct a licentiate found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
11 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
12 included in a stipulated settlement.

13 INSPECTION – SEPTEMBER 2, 2015

14 23. On or about September 2, 2015, a Board inspector (the "inspector") arrived prior to
15 09:00 hours at the premises of Respondent Lisa Family Pharmacy in Magalia, California, to
16 conduct an inspection. The inspector attempted to enter, but the premises was locked and
17 appeared uninhabited. The inspector observed a car drive behind the store and the door to the
18 store was subsequently unlocked. At approximately 09:05 hours, the inspector entered the facility.
19 The inspector approached the counter, which was attended to by Respondent May, and asked to
20 see the pharmacist. Respondent May told the operator that Respondent Hohenthanner was on the
21 phone. The operator observed two more individuals, later identified as pharmacy technicians
22 "O.W." and "S.B.", enter the premises. The inspector again asked the whereabouts of the
23 pharmacist. Respondent May finally told the inspector that she had unlocked and accessed the
24 pharmacy and that Respondent Hohenthanner usually arrived at 09:30 hours. The inspector said the
25 pharmacy needed to be closed. Respondent May locked the doors to the pharmacy with the keys
26 Respondent May had in her possession. The inspector then retained control of the keys to the
27 pharmacy until Respondent Hohenthanner arrived at approximately 09:20 hours.

28 24. In the course of the inspection, Respondent Hohenthanner confirmed that two scripts
for Tramadol, dated February 26, 2015, and February 27, 2015, had been transcribed by

1 pharmacy technicians, who printed the initials "LH", where the pharmacist was to sign or initial.
2 Tramadol is a Schedule IV controlled substance pursuant to Code of Federal Regulations, title 21,
3 section 1308.14(b)(3).

4 25. The investigator found a script for Temazepam containing the notation "OK per Ann
5 to change to one 30 mg tab and one 15 mg. tab to equal 45 mg." The note was dated March 11,
6 2015, and was initialed by Respondent May. Temazepam is a Schedule IV controlled substance
7 pursuant to Code of Federal Regulations, title 21, section 1308.14(c)(50).

8 26. On or about November 10, 2015, the inspector returned to Respondent Lisa Family
9 Pharmacy. The investigator obtained a patient profile for patient "D.C." for the period
10 November 10, 2013 to November 10, 2015. The inspector noted that Respondent Lisa Family
11 Pharmacy refilled D.C.'s prescription for Carisoprodol, originally prescribed on April 27, 2015,
12 seven times between the original fill date, April 27, 2015, and July 27, 2015. Carisoprodol is
13 designated a Schedule IV controlled substance pursuant to Code of Federal Regulations, title 21,
14 section 1308.14(c)(6).

15 FIRST CAUSE FOR DISCIPLINE

16 (Violations of Federal and State Laws or Regulations Governing Pharmacy)

17 27. Paragraphs 23 through 26, above, are incorporated herein as though fully set forth.
18 Respondent Lisa Family Pharmacy and Respondent Hohenthanner are subject to discipline
19 pursuant to Code section 4301(o), on the grounds of unprofessional conduct, in that they violated
20 statutes and regulations applicable to governing pharmacy, as follows:

21 a. On or about September 2, 2015, Respondent Lisa Family Pharmacy and Respondent
22 Hohenthanner failed to ensure that possession of a key to the pharmacy was restricted to a
23 pharmacist, in violation of Regulation 1714(d).

24 b. On or about September 2, 2015, Respondent Lisa Family Pharmacy and Respondent
25 Hohenthanner failed to ensure that Respondent May, O.W., and S.B., pharmacy technicians and
26 employees of Respondent Lisa Family Pharmacy, were under the direct supervision and control
27 of a pharmacist, in violation of Code section 4023.5, and Regulation section 1793.7(b).

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1 c. On or about February 26, 2015, and February 27, 2015, Respondent Lisa Family
2 Pharmacy and Respondent Hohenthanner allowed someone other than a pharmacist to transcribe
3 oral prescriptions for Tramadol, a controlled substance, in violation of Code section 4070(a) and
4 Regulations 1717(c) and 1793.1(a).

5 d. Between the original prescription date on or about April 27, 2015, and July 27, 2015,
6 Respondent Pharmacy and Respondent Hohenthanner refilled D.C.'s prescription for Carisoprodol,
7 a Schedule IV controlled substance pursuant to Code of Federal Regulations, title 21, section
8 1308.14(c)(6), seven times, in violation of United States Code, title 21, section 829(b), and the
9 Code of Federal Regulations, title 21, section 1306.22.

10 **SECOND CAUSE FOR DISCIPLINE**

11 (Violation of State Laws and Regulations Governing Pharmacy by Pharmacy Technician)

12 28. Paragraphs 23 and 25, above, are incorporated herein as though fully set forth.
13 Respondent May is subject to discipline pursuant to Code section 4301(o) on the grounds of
14 unprofessional conduct, in that she violated statutes and regulations applicable to governing
15 pharmacy, as follows:

16 a. On or about September 2, 2015, Respondent May possessed a key to Respondent Lisa
17 Family Pharmacy's premises, which she used to access, open, and commence work as a pharmacy
18 technician in the pharmacy when a pharmacist was not present, in violation of
19 Regulation 1714(d), and 1793.7(b).

20 b. On or about March 11, 2015, Respondent May consulted a health care professional or
21 their authorized agent regarding a patient's prescription for Temazepam, a Schedule IV controlled
22 substance, in violation of Regulation 1793.1(e) and Code section 4115.

23 **MATTERS IN AGGRAVATION**

24 29. To determine the degree of discipline to be assessed against Respondent Lisa Family
25 Pharmacy and Respondent Hohenthanner, if any, on or about April 22, 2014, in the course of an
26 inspection of the pharmacy, "P.P.", a Board inspector, waited approximately 40 minutes for
27 Respondent Hohenthanner to return to the pharmacy. Respondent Hohenthanner was advised by

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1 P.P. that Respondent was subject to regulatory consequences for absences in excess of thirty
2 minutes.

3 30. To determine the degree of discipline to be assessed against Respondent Lisa Family
4 Pharmacy and Respondent Hohenthanner, if any, on or about September 27, 2013, the Board
5 issued Respondent Hohenthanner a Letter of Admonishment for a violation of Regulation 1714(d),
6 in that on or about and between and unknown date in 2012 to October 19, 2012, Respondent
7 Hohenthanner was the pharmacist in charge when a pharmacy technician stole drugs from the
8 pharmacy. An audit revealed drug shortages and Respondent Hohenthanner was not able to
9 account for all of the shortages.

10 **OTHER MATTERS**

11 31. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No.
12 PHY 51582, issued to Lisa Family Pharmacy Inc., doing business as Lisa Family Pharmacy, Lisa
13 Family Pharmacy Inc., doing business as Lisa Family Pharmacy, shall be prohibited from serving
14 as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee
15 for five years if Pharmacy Permit Number PHY 51582 is placed on probation or until Pharmacy
16 Permit Number PHY 51582 is reinstated if it is revoked.

17 32. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No.
18 PHY 51582, issued to Lisa Family Pharmacy Inc., doing business as Lisa Family Pharmacy,
19 while Lisa Susanne Hohenthanner has been an officer, and had knowledge of or knowingly
20 participated in any conduct for which the permit was disciplined, Lisa Susanne Hohenthanner
21 shall be prohibited from serving as a manager, administrator, owner, member, officer, director,
22 associate, or partner of any licensed or permitted entity for five (5) years if Pharmacy Permit
23 Number PHY 51582 is placed on probation, or until Pharmacy Permit Number PHY 51582 is
24 reinstated, if revoked.

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1 PRAYER

2 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Pharmacy issue a decision:

4 1. Revoking or suspending Pharmacy Permit Number PHY 51582, issued to Lisa Family
5 Pharmacy Inc., doing business as Lisa Family Pharmacy;

6 2. Revoking or suspending Pharmacist License Number RPH 63937, issued to Lisa
7 Susanne Hohenthanner;

8 3. Prohibiting Lisa Susanne Hohenthanner from serving as a manager, administrator,
9 owner, member, officer, director, associate, or partner of any licensed or permitted entity for five
10 (5) years if Pharmacy Permit Number PHY 51582 is placed on probation, or until Pharmacy
11 Permit Number PHY 51582 is reinstated, if revoked;

12 4. Revoking or suspending Pharmacy Technician Registration Number TCH 93974,
13 issued to Julie Catherine May;

14 5. Ordering to Lisa Family Pharmacy Inc., doing business as Lisa Family Pharmacy,
15 Lisa Susanne Hohenthanner, and/or Julie Catherine May to pay the Board of Pharmacy the
16 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
17 Professions Code section 125.3;

18 6. Taking such other and further action as deemed necessary and proper.

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20 DATED: _____

9/16/16

Virginia Herold

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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